

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1687 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

BHUPATRAI DHARAMSHI DATTANI

Versus

AMRATLAL JERAMBHAI

Appearance:

MR SURESH M SHAH for Petitioner

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/07/1999

C.A.V. JUDGEMENT

1. Present respondent - the original plaintiff
landlord filed a suit against the present petitioner
original defendant for eviction on the ground of
acquiring of a suitable alternative accommodation by the
tenant and also for the breach of the terms of the

tenancy on alleged sub-tenancy.

2. The suit was filed by the plaintiff in the Court of Civil Judge (JD), Jamnagar, being Regular Civil Suit

No. 740 of 1994. In the city of Jamnagar the suit premises is situated and named as "Laxmi Bhuvan" and first floor was given on rent to the present petitioner by the landlord respondent for rent of Rs.150 per month for residential purpose. The tenant was also permitted to keep his goods in the premises. It was the case of the plaintiff that the defendant tenant has acquired very suitable alternative accommodation and that he himself not using the suit premises and the premises has been sublet by the plaintiff to third party and the decree for eviction was prayed. Learned trial judge came to believe that there was a breach of tenancy, that the plaintiff was able to prove subletting, and that since the defendant had acquired suitable alternative accommodation, and since the suit premises were rented for the residential purposes only, the trial judge passed the decree of eviction on 31st December, 1997.

3. Being aggrieved, the defendant filed an Appeal before the District Court at Jamnagar being Regular Civil Appeal No. 11 of 1998. After hearing the parties, learned Extra Assistant Judge, Jamanagar, dismissed the Appeal and confirmed the findings of the trial court and hence this Revision Application is filed by the original defendant - tenant.

4. Learned counsel Mr. S.M. Shah on behalf of the petitioner - original defendant and learned counsel Mr. M.B. Gandhi, on behalf of the respondent were heard.

Both the counsels agreed to hear the matter finally and, therefore, the Record and Proceedings of this matter was called for and hence the matter is heard finally at this stage.

5. Learned counsel Mr. S.M. Shah on behalf of the petitioner has raised the following points:

- (i) The learned Appellate Judge has mixed up the reasoning in the grounds of sub-tenancy and the alternative accommodation and, therefore, the conclusion is vitiated.

(ii) The suit premises were not only let for the residential purposes but for residential as well as business also.

(iii) The rent note, according to Mr. Shah is clear on this point and, therefore, the acquiring of alternative accommodation by the tenant would not be a ground for eviction because this ground will not be available to the landlord. For this, learned counsel Mr. Shah has placed reliance on the decision of the Supreme Court in the matter of DR. GOPAL DAS v. S.K. BHARDWAJ, reported in AIR 1963SC 337.

6. Mr. Shah has also urged that so far as the ground of sub-tenancy is concerned, it is amply proved that

along with the tenant, sister of the mother of the tenant and her husband (masa and masi) being close relatives, were staying and there was no transfer of possession let alone passing of consideration from the above mentioned relatives to the defendant tenant on account of sub-tenancy.

7. While Mr. Gandhi has, on behalf of the opponent has urged that the dominant purpose of letting of the premises was residential one, and only permission was granted to keep the goods in suit premises. Masa and Masi of the tenant were found in exclusive possession because tenant was staying in the alternative accommodation acquired by him and hence the courts below have rightly drawn inference of passing of the consideration between the tenant and sub-tenant. Mr. Gandhi has argued that there are concurrent findings of facts by courts below recording the fact, which cannot be upset and hence he supported the decree of eviction passed by both the courts below.

8. Both the counsels, however, have placed reliance on the decision of this court in the matter of DR. POPATLAL PREMCHAND SHETH (Since Decd.) THROUGH HIS HEIRS DINESH POPATLAL SHETH vs. M/S DHANJIBHAI & SONS reported IN 1994 (1) GLR 71.

9. Now, considering the rival contentions of both the sides, it appears that the eviction decree has been

passed mainly on two grounds, namely, (1) that the tenant has acquired a suitable accommodation; and (2) the tenant has sublet the premises and has committed the breach of the tenancy. Both the courts below have come to the conclusion regarding the acquiring of the suitable accommodation by the tenant. That both the courts below have placed reliance on Exh. 46 i.e. the Index of the Registration of the documents, by which it is proved that in the name of wife of tenant, a suitable accommodation has been acquired by the tenant. Vide Exhibit 39, the bill of water tax in the name of the wife of the tenant, vide Exh. 41, a bill of house tax also have been produced on record and it is also proved that the tenant is not residing in the suit premises, for which, the trial court as well as the appellate court have taken into consideration the panchnama prepared by the Court Commissioner, which is produced at Exh.49. It is a finding of fact by both the courts below, this cannot be said to be perverse and, therefore, the fact on the record is proved that tenant has acquired a suitable accommodation and that the tenant is not residing in the suit premises.

10. Now, according to Mr. Shah, this ground of acquiring alternative accommodation by the tenant would not be available to the landlord because the premises were let for residential as well as for commercial purposes because rent note denotes according to Mr. Shah that the tenant will be allowed to keep his goods in the

suit premises. He has relied on the decision of the Supreme Court in GOPAL DAS (supra) wherein suit premises were let for the commercial as well as residential purposes, and if, the premises is used for any of the above purposes, then acquiring of a suitable accommodation for the residential purpose, would not be a ground for the eviction decree. Therefore, Mr. Shah has urged that this ground is not available to the landlord and both the courts below have erred in arriving at this finding.

11. Considering the argument of Mr. Shah, the rent note, which is at Exh. 29 is required to be seen and taken into consideration. Reading this rent note as a whole, the intention of the parties could be gathered from the terms is that the dominant purpose for letting the premises is only residential and not commercial. Only a term is inserted that the tenant is permitted to

keep his goods in the premises. Reading the rent note as a whole, it is made very clear that the premises is let for residential purposes only and tenant is prohibited to use the premises for commercial purposes. Only that, he is permitted to keep and store his goods in the suit premises and, therefore, the interpretation of the courts below that the rent note denotes the purpose of residential only and not commercial is correct and hence, the argument of Mr. Shah that since the premises were

let for the residential as well as commercial purpose, the ground of alternative accommodation would not be available to the landlord, cannot be accepted. It is very clear from the terms of rent note that the intention of the parties is to let the premises for the residential purposes only, and hence, the above mentioned decision of the Hon'ble Supreme Court wherein the premises were let for commercial as well as residential purposes, would not be useful to the petitioner. In this view of the matter, it has to be held that both the courts below have rightly come to the conclusion that the tenant has acquired suitable accommodation, and since tenant resides in that premises and not residing in the suit premises, the eviction decree is required to be passed. Thus, the finding of the courts below on the ground of acquiring of alternative accommodation by the tenant is according to law, requires no interference at all.

12. So far as next ground of sub-tenancy is concerned, Mr. Shah has expressed his grievance that the First Appellate Court has mixed up the issues of sub-tenancy, non-user and acquiring of the alternative accommodation, but the evidence on record is mixed up; the same evidence is used by the courts below for the grounds of the alternative accommodation; and for the sub-tenancy. The discussion on the same evidence for both the grounds by the the courts below would be legal. The tenant has

filed is written statement in the suit. Though he has denied to have sublet the suit premises, but he has not made any averments that his nearest relatives i.e. Raja Chandulal Shamji and his family is residing in the premises and that they being nearest relatives, since inception they are with the tenant in the suit premises.

However, the tenant has come with the case in the evidence only that Raja Chandulal Shamji is the husband of the sister of his mother and his family is residing with the tenant since the inception, and that no consideration at all is taken for his residence in the suit premises. Mr. Shah has vehemently urged that the relatives are so near that the question of taking any consideration does not arise at all and, therefore, the courts below have erred in concluding that the premises were sublet to Raja Chandulal Shamji and the courts below have further erred in inferring consideration, which ought not to have inferred because Raja Chandulal Shamji is the nearest relative of the tenant.

13. Taking into consideration the evidence on record, it is amply established that the suit premises is exclusively used by Raja Chandulal Shamji. The courts below have taken into consideration the oral evidence of the power of attorney holder of the plaintiff, electoral roll of 1993, which clearly denote that only Raja Chandulal Shamji is residing in the suit premises and those lists are produced at Exhibits 30 and 37. In the voters list, name of defendant or his family members have

not been mentioned. Vide Exh.35, the Savings Account with the Co-operative Bank in the name of Raja Chadulal Shamji is produced, wherein his residential address is shown to be the suit premises. When Chandulal Shamji retired in 1991 as a Teacher, he has given his address of suit premises. An attempt has been made to change this address.

14. This evidence undoubtedly denotes that the theory advanced by the tenant that his masa and masi were residing along with the family of the tenant right from the inception appears not to be probable. What is proved by the evidence is that the tenant and his family is not residing in the suit premises, and further it is proved that tenant is residing in the other premises i.e. an alternative accommodation acquired by the tenant. It is further proved by this evidence that this suit premises is exclusively used by Raja Chandulal Shamji and his family. If these facts are considered, when the fact that the suit premises were let only for the residential purposes, and that the tenant has acquired a suitable residential accommodation, the inescapable conclusion would be Raja Chandulal Shamji is in exclusive possession of the suit premises, which is not merely a permission to use the premises. Now, it is vehemently argued that

there cannot be any consideration for the use of the premises from a nearest relative like masa and masi and in fact, there was not any consideration from the nearest relative. The conclusion may be other wise if nearest relatives are staying together with the family of

the tenant, but when relatives are found to be using the suit premises exclusively, and when the tenant is found to have acquired a suitable accommodation and is found to be residing in that accommodation and along with exclusive possession, such circumstances, invariably lead to the inference of the passing of the consideration from the third party occupier of the suit premises to the tenant, even if third party occupier may be relative of the tenant and in this case, this is the breach of the terms of the tenancy, which would result in an eviction decree, which is passed by the courts below and it is according to law, requires no interference at all.

15. Learned counsel Mr. Shah has placed heavy reliance on the decision of this court in the case of Dr.P.P. SHETH (supra) but the facts of that case were altogether different. The suit premises were given on rent to a Surgeon Doctor, he formed a partnership firm, in which he was a partner. This partnership firm was using the suit premises and in the suit filed on allegation of sub-tenancy, this court observed that in order to prove subletting, the landlord has to establish two vital facts, namely, transfer of exclusive possession of the rented premises or any part thereof and valuable consideration for such transfer thereof for the purpose of subletting. This court in the above mentioned decision, relied upon the decision of the Supreme Court in the case of JAGAN NATH (decld.) through LRS vs. Chander Bhan, reported in AIR 1988 SC 1362 that the principle is the exclusive possession and the valuable

consideration. These two factors must have been proved by the plaintiff in a suit filed on the ground of subtenancy. In that particular case of Dr.P.P. Sheth (Supra), this court found that the partnership as a sham, but applying the aforementioned principle, if third party is allowed, the tenant is in mere permissive possession, the question of sub-tenancy does not arise. But in this case, it is amply proved that the tenant is residing somewhere else and premises is exclusively used by Raja Chandulal Shamji, to whom the defendant refers to be his nearest relative and his family since at least from 1991

and hence the transfer of exclusive possession is proved by ample evidence on record. As observed before, it had been a case that masa and masi are residing along with the tenant in the suit premises, then the conclusion might have been different, but when it is proved that the tenant is not residing in the suit premises, and since masa and masi are found to be using the suit premises exclusively, the first vital factor for the sub-tenancy is said to have been proved i.e. exclusive possession and there is no presumption that a valuable consideration would not pass from nearest family members to the tenant. On the contrary, in the facts and circumstances of this case, the presumption would be that a valuable consideration is passing from Raja Chandulal Shamji to the tenant and that the breach of tenancy. Applying this law to the findings of fact by both the courts below, rightly passed the eviction decree on the ground of sub-tenancy also, and according to law no interference is required in this Revision.

16. In view of the above mentioned discussion, this Revision stands rejected with no order as to costs. However, the interim relief granted in the matter earlier i.e. on 15th June, 1999 in terms of para 7(b) of the memo of Revision shall continue upto 30th September, 1999.

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